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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Hector Garcia Salvatierra hereby submits his comments on the Further Notice of Proposed Rulemaking released by the FCC in the above-captioned proceeding on May 8, 1992.<sup>1</sup> Mr. Salvatierra agrees with the Commission's decision to include in the pool of parties eligible for ATV channels existing broadcast licensees, permittees and current applicants who are ultimately awarded a television broadcast license. The agency's proposal as to the ranking of these parties, however, in the event of a spectrum shortage, does not further the Commission's interest in assuring the rapid development of ATV facilities and grants an unfair advantage to incumbent broadcasters over permittees. For the reasons discussed below, Salvatierra believes that financial qualifications, not NTSC broadcasting experience, should be the only factor used to distinguish among competing entities in the event of a spectrum shortfall.

<sup>1</sup> Mr. Salvatierra is the general partner of Hector Garcia Salvatierra, Limited Partnership, permittee of Channel 51 in Tolleson, Arizona.

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In the Second Report and Order adopted in this proceeding, the Commission stated that the class of existing broadcasters who initially would be eligible for ATV channels would include:

(1) all full-service television broadcast station licensees, (2) permittees authorized as of the date of adoption of the Notice, and (3) all parties with applications for a construction permit on file as of the date of adoption of the Notice who ultimately are awarded full-service television broadcast station licenses.

Second Report and Order, ¶8. In affording priorities in the case of insufficient spectrum, the Commission is proposing to rank eligible parties "according to their degree of experience as NTSC broadcasters." Id. The Commission believes that this ranking "would harmonize with our fundamental reason for initially restricting eligibility, to bring ATV to the public in the most expeditious and non-disruptive manner. It would do this by enabling those with relatively greater experience and expertise in broadcasting to deliver ATV service to the public first. " Id.

Salvatierra respectfully submits, however, that experience as an NTSC broadcaster does not necessarily mean that the broadcaster will be capable of bringing ATV service to the public sooner than other entities, such as permittees. As the Commission recognized, "adequate financing is critical to prompt construction." Second Report and Order, ¶29. All existing broadcasters, however, will not necessarily have the

financial resources required to undertake the appreciable capital investment necessary in order to implement ATV service expeditiously.

In 1991, the FCC Office of Plans and Policy examined the competitive situation of the television broadcasting industry from 1975-1990. The FCC staff concluded that during the last half of the 1980's, average profits showed a pronounced downtrend for both affiliates and independents, and that declining profits and increasing losses occurred for all classes of stations, with heavy losses concentrated among UHF independents and small-market stations. See Broadcast Television in a Multi-Channel Marketplace, OPP Working Paper No. 26, FCC Office of Plans and Policy, June 1991, pp. 37, 46. At least 25% of stations in the top ten markets experienced losses. Id., p. 35. The authors stressed that the large losses reported in the study must be interpreted with caution, and add that "interest on debt incurred to purchase stations enters into costs and may affect the pattern of profits in ways that are not obvious." Id., p. 39. In addition, according to reports from the National Association of Broadcasters, in 1990, more than 25% of network affiliates lost more than \$197,000, and 50% of independent stations lost over \$410,000. National Association of Broadcasters Petition for Reconsideration in MM Docket No. 87-268, ("NAB Petition") pp. 22-23.

This pattern of declining profits and increased losses indicates that many incumbent broadcasters may not be in satisfactory financial condition to undertake the substantial capital investment needed to implement ATV swiftly and efficiently. Indeed, the NAB has recognized that "[g]iven the weakened financial state of the television industry, it is going to be difficult for many television stations to find the funds to invest in first generation HDTV equipment." NAB Petition, p. 22. In contrast, a less experienced company, such as Hector Garcia Salvatierra Limited Partnership, a recent permittee with unbuilt facilities who is adequately capitalized and not overly dependent on debt financing, may be able to arrange its equity and debt capital financing more readily. However, if eligible entities are ranked solely according to their experience as NTSC broadcasters, then entities such as the Salvatierra partnership may be precluded from participating.

Accordingly, Salvatierra proposes that the Commission require each eligible entity, including incumbent broadcasters, to demonstrate that it has a firm financial commitment to cover the costs of constructing and operating the ATV facilities at the time its application is filed.<sup>2</sup> Such a showing will require submission of a loan commitment

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<sup>2</sup> This standard goes beyond the "reasonable assurance" standard generally applied to broadcast applications.

letter from a financial institution, or if equity is involved, copies of fully executed subscription agreements and financial statements of the subscribers, which demonstrate that the necessary funds are, in fact, ready and available.<sup>3</sup> All entities who successfully make this showing would then remain in the pool of parties eligible for ATV channels, with no ranking being made.

Such a requirement is consistent with the FCC's recognition that adequate financing is critical to the prompt construction of ATV facilities. The agency has already rejected a request that would permit an extension of the construction deadlines for inability to obtain financing. See Second Report and Order, ¶ 29. Salvatierra strongly opposes any suggestion that the FCC adopt a policy of granting extensions upon a demonstration of present financial inability coupled with a showing of future capability. Such a policy would favor an experienced incumbent broadcaster not having present financial capability over, for example, a permittee with unbuilt facilities but having present financial capability. Salvatierra believes that this policy would be inherently unfair and detrimental to the public interest since applicants would not be financially qualified,

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<sup>3</sup> Because bank commitment letters may be of a specified, limited duration, the FCC staff will have to act quickly to review and grant applications.

and would be unable to bring ATV service to the public in the most expeditious and non-disruptive manner.

In addition, relying on experience as the sole factor to distinguish among competing parties for ATV facilities seriously undermines the FCC's objective of enhancing ownership diversity of the media. A ranking based on experience effectively disenfranchises an entire class of broadcasters--permittees--the majority of whom, like the Salvatierra partnership, received authority to construct broadcast stations because they were found to advance the Commission's diversity goals and thus would serve the public interest. While Salvatierra recognizes the importance of the FCC's objective to implement expeditiously the enhanced video resolution and improved audio fidelity offered by ATV technology, he does not believe that ownership diversity should be sacrificed in the interests of expediency. This is especially true when the basis relied on by the FCC--experience--is not a reliable predictor of rapid development of ATV facilities.

Accordingly, Salvatierra respectfully requests that the Commission not adopt its proposal to rank eligible entities for ATV channels according to NTSC experience. Rather, Salvatierra respectfully suggests that the FCC require all eligible entities to demonstrate a firm financial commitment to construct an ATV facility, and that all applicants satisfying this standard be placed in the pool of parties for award of an ATV channel.

Respectfully submitted,

*Hector Salvatierra*

Hector Garcia Salvatierra

July 16, 1992